NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS
IN THE COURT OF APPEAL OF THE
STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SEVEN

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL, Petitoner, v. ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD OF CALIFORNIA, Respondent. ALVIN KLEIN, et al., Real Parties In Interest.	B134373 (Alcoholic Beverage Control Appeals Bd. No. AB-7184) COURT OF APPEAL - SECOND DISTRICT FILED JAN 26 2000 JOSEPH A. LANE CLERK

ORIGINAL PROCEEDING; petition for writ of review. Granted.

Bill Lockyer, Attorney General, Martin H. Milas, Senior Assistant Attorney General, Silvia M. Diaz, Supervising Deputy Attorney General, and Chris A. Knudsen, Deputy Attorney General, for Petitioner Department of Alcoholic Beverage Control.

Respondent does not appear.

Ralph B. Saltsman, Solomon, Saltsman & Jamieson for Real Parties in Interest Alvin Klein, Robert Lippman and Steven Lippman.

SUMMARY

The Alcoholic Beverage Control Appeals Board may not reweigh the evidence and reverse a decision of the Department of Alcoholic Beverage Control revoking a liquor license, where the revocation is supported by substantial evidence that the licensee sold liquor to a minor despite his presentation of a driver's license showing him to be 19 years old.

FACTS AND PRIOR PROCEEDINGS

Petitioner, the Department of Alcoholic Beverage Control, seeks review of the Alcoholic Beverage Control Appeals Board's decision reversing the Department's revocation of a license to sell liquor. The license was revoked after a full evidentiary hearing in which Department's administrative law judge found that real parties in interest (Klein, R. Lippman and S. Lippman) had sold alcoholic beverages to a minor on three occasions within 36 months.

The evidence presented at the hearing is summarized as follows.

Real parties own a liquor store. On October 4, 1997, Department's agent Yee was in the store and saw the clerk sell beer to a young man whom yee suspected was underage. Yee saw the young man show the clerk an identification card, but Yee could not inspect the card or hear the conversation from his position seven feet away. The young man left the beer on the counter, momentarily left the store, returned shortly, gave the clerk cash, and took the beer.

Outside the store Yee stopped the young man, who produced a California driver's license showing him to be Aaronmichael Younessi, age 19, born in 1978. The license bore a red stripe, and had the photo on the right side, features used to distinguish minors' licenses from adults'.

Younessi said this was the identification he had presented to the clerk. Younessi denied having or presenting other false identification card. He claimed he left the store to get additional money to pay for the beer. The beer cost $12 or more, but he had only $10.

After speaking with Younessi, Yee entered the store and identified the clerk as Jose Ballesteros. Yee told Ballesteros that he had just sold beer to a minor. Yee testified that Ballesteros then said that he had been busy and must have made a mistake.

At the hearing, conducted in April 1998, Ballesteros testified that he recalled the identification card shown by Younessi, and it had no red stripe, had the photo on the left side, and showed Younessi as 27 years old. Younessi appeared to be 27 to Ballesteros. Ballesteros admitted that just after the sale officer Yee showed him the identification taken from Younessi, and that this identification showed Younessi as underage. Ballesteros did not testify that he told Yee the underage identification was different from that shown by Younessi before the sale; instead Ballesteros claimed he told officers nothing about the sale.

The judge found that Younessi appeared to be 19 years old rather than 27.

Yee and the other officers who joined him did not search Younessi's person, the car in which he came to the liquor store, or his companions.

Real parties sought to impeach Younessi with a cash register tape evidencing that the beer cost only $8.97. They argued that this evidence undercut Younessi's claim that he left the store to get more money, since he also said he had $10. They urged the judge instead should infer that Younessi left the store to rid himself of a false ID card.

Evidence was introduced that real parties had sold alcohol to minors twice in 1996 and twice in 1990.

The judge noted the conflicts in evidence, but ultimately rejected Ballesteros' claim that he was shown a false ID, stating "while [certain] facts and inferences support

respondents' contention of a false ID, other facts and inferences do not." The judge noted, among other things, that Ballesteros did not at the time claim that false identification was presented, instead asserting he was busy and made a mistake. The judge concluded real parties' license should be revoked.

The Board reversed, concluding that the judge did not "definitively" find that Younessi showed his true driver's license, and stating that "it rises to the level of unfairness to deprive these licensees of the right to sell alcoholic beverages where, as here, there was such an ineffective search for evidence that might have vindicated them."

The Department then filed its petition for review, and we granted a hearing.

FACTS AND PRIOR PROCEEDINGS

Business and Professions Code section 25658 forbids sale of alcohol to minors. Section 25658.1, subdivision (b), authorizes the Department to revoke the liquor license of a person violating sectiono 25658 three times within 36 months. In defense a licensee may attempt to show that he demanded, was shown, and relied on bona fide evidence of a majority. (§ 25660.)

Section 23084, subdivisions (c) and (d), define the scope of the Board's review of Department's decisions. Board's review is confined to determining whether Department's decisions are supported by its findings, and whether the findings are supported by substantial evidence. Appellate courts likewise review whether Department's findings support the decision and whether substantial evidence supports the findings. (§ 23090.2, subd. (c) and (d).) "Substantial evidence" is evidence which is reasonable and credible. (*Kuhn v. Department of General Services* (1994) 22 Cal. App. 4th 1627, 1633.)

In this case, the Department's decision to revoke respondent's license was supported by the judge's finding rejecting as not credible respondent's claim that Younessi showed apparently bona fide, false identification. The

Board contends that the judge made no "definitive finding" that false identification was not shown, but this is a strained reading of the judge's written order. The judge recited in detail the evidence refuting the false identification claim, twice referring to Ballesteros' failure mention false identification on the night of the sale. Read fairly, the judge's order made alternative findings: that no false identification was shown, and that even if it was, Ballesteros in the exercise of prudence should have realized from Younessi's appearance that he was underage.

Further, substantial evidence supported the Department's findings. Though Ballesteros testified at the hearing that he was shown and relied on bona fide evidence of Younessi's majority, this claim was convincingly impeached by Yee;s testimony that Ballesteros said a few minutes after the sale that he was "busy and made a mistake." The alleged "mistake" was inconsistent with the later claim that Ballesteros properly relied on identification showing Younessi to be 27. Spontaneous statements at the time of events are frequently more credible than testimony prepared for trial. In addition, Younessi's testimony strongly supported the Department's conclusion. And, the administrative law judge observed the witnesses, assessed their credibility, and evaluated Younessi's appearance.

The Board did not confine itself to confirming that Department's findings supported its decision, and that Department acted based on substantial evidence. Instead, the Board reweighed the evidence, contrary to the mandate of section 23084. The judge was not required to explain away all contradicitions in the evidence. Few trial decisions would ever be upheld if this was required. The quintessence of the substantial evidence rule is recognition that trial tribunals must unavoidably select among conflicting bodies of evidence, and are better situated to do so than appellate or reviewing tribunals.

The Board's criticism of the officers' allegedly inadequate search for false identification is not persuasive. Had Ballesteros contemporaneously claimed that Younessi's identification showed him to be 27, the officers would have had reason to search further. But Ballesteros' statements suggested instead that Younessi had showed his true identificationo and that Ballesteros had mistakenly accepted it. Under these circumstances there was no reason for the officers so search further for some other identification card.

DISPOSITION

The order of the Alcoholic Beverage Control Appeals Board is reversedm and the Board is directed to reinstate the Department's order revoking real parties' liquor license.

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NEAL, J.

We concur:

LILLIE, P.J.

JOHNSON, J.

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Division 7
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